STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SUMMERVILLE ELEMENTARY TEACHERS ASSOCIATION, CTA/NEA,	)	
Charging Party,	)	Case No. S-CE-1495
v.	)	PERB Decision No. 956
SUMMERVILLE ELEMENTARY SCHOOL DISTRICT,	)	November 12, 1992
Respondent.	)	

Appearances: California Teachers Association by Ramon E. Romero, Attorney, for Summerville Elementary Teachers Association, CTA/NEA; Littler, Mendelson, Fastiff & Tichy by Richard M. Noack, Attorney, for Summerville Elementary School District.

Before Camilli, Caffrey and Carlyle, Members.

DECISION AND ORDER

CAFFREY, Member: This case is before the Public Employment Relations Board (Board) on appeal by the Summerville Elementary Teachers Association, CTA/NEA (Association) of a Board agent's dismissal (attached hereto) of the Association's unfair practice charge. The Association alleged that the Summerville Elementary School District had violated section 3543.5(a) (b) and (c) of the Educational Employment Relations Act (EERA)[1] by taking action to

[1]EERA is codified at Government Code section 3540 et seq. Section 3543.5(a) (b) and (c) states, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights

unilaterally implement a proposal concerning wages and benefits.

The Board has reviewed the Board agent's warning and dismissal letters, and finding them to be free of prejudicial error, adopts them as the decision of the Board itself.

The unfair practice charge in Case No. S-CE-1495 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Camilli and Carlyle joined in this Decision.

---

guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

August 11, 1992

Ramon E. Romero
California Teachers Association
P.O. Box 921
Burlingame, CA 94011-0921

Re: Summerville Elementary Teachers Association v. Summerville Elementary School District
Unfair Practice Charge No. S-CE-1495
DISMISSAL LETTER

Dear Mr. Romero:

On July 2, 1992, you filed the above-referenced charge alleging violations of Government Code section 3543.5(a), (b) and (c). Specifically you have alleged that the District has violated Government Code section 3543.5(c) "by announcing its clear intent to unilaterally implement its latest proposal concerning wages and benefits."

I indicated to you, in my attached letter dated July 17, 1992, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to July 27, 1992, the charge would be dismissed.

On July 29, 1992, I received your amended charge. In that amended charge you submitted further information to support your position that the Summerville Elementary Teachers Association (SETA) has been voluntarily recognized as the exclusive representative by the Summerville Elementary School District (District). Specifically, you state that the District officially recognized SETA as the exclusive representative at a May 14, 1991, meeting of the District's Board of Trustees. The minutes of the meeting reflect that "The Board officially received the Summerville Elementary Teachers Association/CTA/NEA contract proposal and provided for public comment on the contract. Board response to the contract will be on June agenda." You state

that from May 1991 to the present the parties have engaged in negotiations for their first collective bargaining agreement and that the District is in the process of filing with PERB a request for impasse determination and the appointment of a mediator. You further allege that in May 1991 "The District readily agreed to enter into negotiations with SETA representative (sic) without any hesitancy whatsoever because there was no question about the fact that SETA had majority support from those certificated employees who were in the unit." You also state that the employer's initial proposal to SETA contained a recognition clause in which the Association is recognized by the District as the exclusive representative. Subsequently the District made a proposal titled, "Right to Bargain," that stated that the collective bargaining agreement between the parties was entered into "pursuant to Chapter 10.7, sections 3540-3549 of the Government Code ("Act")." You refer to other proposals which reflect the employer's recognition of the Association as the exclusive representative.

I have also received your letter of July 29 in which you contend that this Board should adopt the more informal method of voluntary recognition which has been accepted by the National Labor Relations Board. You state that "EERA's language is similar to that of the NLRA." You refer to section 9(a) of the National Labor Relations Act (NLRA) and state that under that section a representative is selected by a majority of employees "without specifying precisely how that representative is to be chosen. . ." You contend that EERA can be construed "so as to allow alternate methods of achieving exclusive representative status" and does not specify "precisely" how an exclusive representative is chosen. Lastly, you argue that "[t]he law should not require such empty formalism, especially in a case like this when proof of majority support for SETA is clear."[1]

As you and I discussed by telephone on or about July 23, 1992, I am aware of no authority to support the proposition that, under EERA, the District may grant exclusive representative status to an employee organization without the parties either proceeding through the appropriate Public Employment Relations Board process for voluntary recognition or by a PERB certified election. The Educational Employment Relations Act (EERA) sets forth two methods under which an employee organization may become an exclusive representative. Government Code section 3544 describes the manner under which an employee organization may request voluntary recognition by a public school employer and includes a

[1]Neither the initial charge nor your amended charge describe the proof of majority support.

process for the determination of a proof of majority support by PERB.[2] The Government Code also provides for representation elections (sections 3544.1-3544.7). It appears to be the clear intent of the Legislature that these two methods are the only means by which an employee organization may become an exclusive representative. SETA has availed itself of neither of these methods and therefore does not qualify as an exclusive representative under the EERA. Accordingly, the District does

---

[2]Section 3544 of EERA states:

> (a) An employee organization may become the exclusive representative for the employees of an appropriate unit for purposes of meeting and negotiating by filing a request with a public school employer alleging that a majority of the employees in an appropriate unit wish to be represented by such organization and asking the public school employer to recognize it as the exclusive representative. The request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall be based upon majority support on the basis of current dues deduction authorizations or other evidence such as notarized membership lists, or membership cards, or petitions designating the organization as the exclusive representative of the employees. Notice of any such request shall immediately be posted conspicuously on all employee bulletin boards in each facility of the public school employer in which members of the unit claimed to be appropriate are employed.
>
> (b) The employee organization shall submit proof of majority support to the board. The information submitted to the board shall remain confidential and not be disclosed by the board. The board shall obtain from the employer the information necessary for it to carry out its responsibilities pursuant to this section and shall report to the employee organization and the public school employer as to whether the proof of majority support is adequate.

not owe SETA the duty to bargain in good faith which is owed to exclusive representatives.

As explained in my letter of July 17, the District appears to have met its obligation to meet and discuss proposals with a nonexclusive representative. Therefore, the charge must be dismissed.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code of Regs., tit. 8, sec. 32635(a).) To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code of Regs., tit. 8, sec. 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code of Regs., tit. 8, sec. 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed.

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document.

The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code of Regs., tit. 8, sec. 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

JOHN W. SPITTLER
General Counsel

By _
Bernard McMonigle
Regional Attorney

Attachment

cc: Richard M. Noack

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

July 17, 1992

Ramon E. Romero
California Teachers Association
P.O. Box 921
Burlingame, CA 94011-0921

Re: Summerville Elementary Teachers Association v. Summerville Elementary School District
Unfair Practice Charge No. S-CE-1495
WARNING LETTER

Dear Mr. Romero:

On July 2, 1992, you filed the above-referenced charge alleging violations of Government Code section 3543.5(a), (b) and (c). Specifically you have alleged that the District has violated Government Code section 3543.5(c) "by announcing its clear intent to unilaterally implement its latest proposal concerning wages and benefits."

The charge states that "at all times relevant herein, the District has recognized the SETA as the exclusive representative of an appropriate bargaining unit of the District's certificated employees." From May 1991 to the present, the District and the Association "have engaged in negotiations for their first collective bargaining agreement." On or about May 2, 1992, the District made the following proposal concerning wages and benefits that

A. "Freeze" all salaries at the 1991-92 step and reduce all salaries by five percent;

B. Place a "cap" on all health and welfare benefits at $409.86 per month for medical, $52.72 per month on dental and $13.16 on vision premiums paid by the District.

You state that on June 15 and on June 23 the District announced its clear intent to implement the above proposal which it described as its best and final offer.

The records in this regional office indicate that there is no certified exclusive representative for the teachers at the Summerville Elementary School District. That is, there has been no exclusive representative certified by this agency either through the appropriate process for voluntary recognition or by certified election. Accordingly, the SETA would appear to be a nonexclusive representative for the District's teachers.

In Los Angeles Unified School District (1983) PERB Decision No. 285, the Board set forth the rights of nonexclusive representatives.

> We stress that the obligation imposed on the public school employer to meet with a nonexclusive representative is not the same as that imposed with regard to an exclusive representative. Thus, whereas the public school employer and representatives of recognized or certified employee organizations have the mutual obligation to meet and negotiate in good faith with regard to matters within the scope of representation (section 3543.5), the Board finds that the obligation imposed by EERA on public school employers with respect to a nonexclusive representative is to provide notice and a reasonable opportunity to meet and discuss wages, fringe benefits, and other matters of fundamental concern to the employment relationship prior to the time the employer reaches a decision on such matters.

Your charge indicates that the parties have been engaged in negotiations. The challenged proposals by the employer were submitted by the District on May 22. Apparently there were meetings on June 15 and June 23 in which the District reiterated its intent to go forward with its proposals. There are no facts which indicate that the employer did not meet its obligation to provide notice and a reasonable opportunity to meet and discuss the above proposals. Accordingly, this charge must be dismissed.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair

practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before **July 27, 1992,** I shall dismiss your charge.[1] If you have any questions, please call me at (916) 322-3198.

Sincerely,

Bernard McMonigle
Regional Attorney

[1]*I* contacted your office to discuss this matter on July 14 and was informed that you were on vacation but would be returning on July 20. Accordingly, the warning letter gives you seven (7) days from the date of your return from vacation to supply an amended charge rather than the normal seven (7) days from the date of the mailing of this letter.